

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JESSE A. LUTHER,)	
)	
Plaintiff,)	
)	
v.)	No. 1:20-cv-00083-JPH-DLP
)	
B. RUST, et al.)	
)	
Defendants.)	

ORDER

The Court has attempted to assist the pro se plaintiff in this action serve defendant Brian Gayton with process. *See Bryant v. City of Chicago*, 746 F.3d 239, 244 (7th Cir. 2014) (stating that plaintiff “as a prisoner proceeding pro se, should have been given more latitude and assistance” in order to effect service). The Court's initial effort to serve Mr. Gayton at Pendleton Correctional Facility was unsuccessful. The Court then ordered the Indiana Department of Correction ("IDOC") to provide Mr. Gayton's last known address. The IDOC complied, and the United States Marshal was directed to serve a summons on Mr. Gayton at the address provided. The Marshal has reported that its attempts at service have been unsuccessful because Mr. Gayton no longer lives at the address on file with the IDOC. Dkt. 25. There is a new resident at that address as of October 2020. *See Williams v. Werlinger*, 795 F.3d 759 (7th Cir. 2015).

It is the Marshals Service's obligation under the law to make "reasonable efforts" to obtain an address and serve this defendant. *Graham v. Satkoski*,

51 F.3d 710, 712 (7th Cir. 1995). This Court is required to "evaluate the Marshals Service's efforts." *Id.*

Here, the Marshals Service contacted the property owner of Mr. Gayton's last known address. Dkt. 25 at 2. The owner confirmed that Mr. Gayton had moved out and had not left a forwarding address. *Id.* The Marshals Service did not stop there. They continued their efforts by contacting Mr. Gayton's mother, who reported that Mr. Gayton no longer lives in Indiana. *Id.* at 3. Mr. Gayton reportedly joined the Army on April 27, 2020. *Id.* As of January 5, 2021, he was stationed at Fort Carson, Colorado. *Id.* The Court finds that the Marshals Service's efforts to locate and serve Mr. Gayton have been reasonable.

Accordingly, the plaintiff shall have through **August 31, 2021**, to identify any further steps the Court should take to assist him with serving Mr. Gayton with process in this case. If Mr. Gayton cannot be served, he will be dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

SO ORDERED.

Date: 7/22/2021



James Patrick Hanlon
United States District Judge
Southern District of Indiana

Distribution:

JESSE A. LUTHER
234499
PENDLETON - CF
PENDLETON CORRECTIONAL FACILITY
Electronic Service Participant – Court Only

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